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JAN 04 2008

OFFICE OF PETITIONS

In re Application of :
Dispenza et al. :
Application No. 10/029,461 :
Filed: December 21, 2001 :
Attorney Docket No. Dispenza 8-3 :
:

ON PETITION

This is a decision on the petition, filed February 16, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application. In the alternative, petitioner has requested review under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is Dismissed.

The petition to revive under 37 CFR 1.137(b) is Granted

This application was held abandoned for failure to reply to the restriction requirement mailed on February 16, 2007, which set a one (1) month shortened statutory period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on May 15, 2006. A Notice of Abandonment was mailed on February 13, 2007.

Petitioner's representative asserts that the Restriction Requirement dated April 14, 2006 was never received. Petitioner states the correspondence address of record for the above-identified application was that of Troutman Sanders when the Restriction Requirement was mailed. However, counsel for petitioner no longer was employed at Troutman Sanders. At the time of mailing of the Restriction requirement, petitioner was employed at Harness, Dickey & Pierce. Counsel insists that the Restriction Requirement was not forwarded to Harness Dickey & Pierce. In support of petitioner's contention a declaration from the Manager of docketing at Harness Dickey & Pierce was provided. Counsel's efforts to obtain information regarding docket records at Troutman Sanders were unsuccessful. Counsel also states the Notice of Abandonment

was never received.

Petitioner's arguments have been considered but are not convincing to establish the holding of abandonment should be withdrawn. The Restriction Requirement was mailed on April 14, 2006 to the then correspondence address of record at Troutman Sanders. Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence address allow for withdrawing the holding of abandonment.

Petition Under 37 CFR 1.137(b)

A grantable petition under 37 CFR §1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR §1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR §1.137 was unintentional, the Director may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Response to the Restriction Requirement, (2) the petition fee of \$1,500.00 ; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1725 for processing of the Response to the Restriction Requirement and for appropriate action by the Examiner in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at
(571) 272-3215.



Charlema R. Grant

Petitions Attorney

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